

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JACK DAVID GETZ,

Case No. 3:06-cv-00320-MMD-CLB

Petitioner,

v.

ORDER

JACK PALMER, *et al.*,

Respondents.

In this habeas case under 28 U.S.C. § 2254, Petitioner has filed an application for leave to proceed *in forma pauperis* and a proposed second amended habeas petition. (ECF Nos. 129, 130.) On December 29, 2017, this Court entered a final order denying Petitioner's amended petition for writ of habeas corpus (ECF No. 68) on the merits and entered judgment accordingly. (ECF Nos. 123, 124.) On June 1, 2018, the Ninth Circuit Court of Appeals denied Petitioner's request for a certificate of appealability. (ECF No. 127.)

If a petitioner has previously filed an application for habeas relief under section 2254 which has been denied on the merits, a federal court cannot grant relief with respect to a claim that was presented in the prior application. See 28 U.S.C. § 2244(b)(1). In addition, the court cannot grant relief with respect to a claim that was not presented in the prior application unless:

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

1 (ii) the facts underlying the claim, if proven and viewed in light of the
2 evidence as a whole, would be sufficient to establish by clear and
3 convincing evidence that, but for constitutional error, no reasonable
factfinder would have found the applicant guilty of the underlying offense.

4 28 U.S.C. § 2244(b)(2). Moreover, § 2244(b)(3) requires a petitioner to obtain leave from
5 the appropriate court of appeals before filing a second or successive petition in the district
6 court. Without an order from the court of appeals authorizing a second or successive
7 petition as required by § 2244(b)(3), this Court is without jurisdiction to consider
8 Petitioner's proposed second amended petition. See *Burton v. Stewart*, 549 U.S. 147,
9 153 (2007).

10 It is therefore ordered that Petitioner's application for leave to proceed *in forma*
11 *pauperis* (ECF No. 129) is denied as moot.

12 DATED THIS 23rd Day of June 2025.

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15 MIRANDA M. DU
16 UNITED STATES DISTRICT JUDGE
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